[DE] Ruling on ISP's Information Obligations

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In a ruling of 28 April 2005 (case no. 5 U 156/04), the Hanseatische Oberlandesgericht (Hanseatic Appeal Court - OLG) discussed the obligation of Internet Service Providers (ISPs) to provide information to copyright holders.

The case concerned a request submitted by a large phonogram manufacturer ("applicant") to an ISP ("respondent") for information concerning a customer's personal details. The respondent's customer runs a so-called FTP server using an IP address allocated by the respondent. The applicant claimed that the server was being used to store digital musical recordings, in which it owned exclusive public access rights. The respondent allocates to its customers dynamic IP addresses, which in the present case were linked to a fixed domain by a third company. The court of first instance had upheld the applicant's request for information.

The Appeal Court decided that the applicant has no right under Art. 101 a of the Urhebergesetz (Copyright Act - UrhG) to demand information about the customer's name and address. According to Art. 101 a UrhG, any person who unlawfully manufactures or distributes copies in the course of business may be required to give the injured party information without delay. The Court acknowledged that Art. 101 a UrhG could not be directly applied because the respondent had not acted unlawfully. The respondent was not guilty of storing the music on the FTP server, since it had no control over the server. Neither could it be accused of distributing the music, since the downloading of music from the FTP server only led to incorporeal distribution.

In addition, the Court ruled that the ISP itself had not breached copyright law either directly or indirectly. For the ISP to be held responsible, it was not sufficient to suggest that it had knowingly collaborated in the offence by providing Internet access. Although under other rules on ISPs' liability the respondent could be obliged to erase illegal content, it was not obliged to disclose information.

Urteil des Hanseatischen Oberlandesgerichts (OLG) vom 28. April 2005 (Az.: 5 U 156/04)

Decision of the Hanseatic Appeal Court of 28 April 2005

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